GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

R&B Dept – NDB- Incorporating the recommendations of Technical Evaluation Committee in Bidding document for procurement of NDB works -Approved- Orders– Issued.

TRANSPORT, ROADS AND BUILDINGS (R-I) DEPARTMENT

G.O.RT.No. 222 Dated: 17-07-2020.

Read the following:

1. G.O.Rt.No.195, TR&B(R.I)Dept., Dt: 24.06.2020.
2. From the CE(R&B)NABARD& LWE, Vijayawada, Lr. No.NDB Works/ Gen /DCE(RR)/EE(RR)/DEE4/AEE12/2020,Dt.19.06.2020.

*****

ORDER:

In the G.O. 1st read above, Government accorded permission for using the existing Tender cum Auction available in Central Public Procurement Portal (eprocure.gov.in)maintained by NIC, including procedure for reverse tendering process available in the central portal, for the NDB Works, as specified by NDB and DEA, GOI and also as concurred by the Hon'ble judge, judicial previewCommission.

2. In the reference 2nd read above, the Chief Engineer(R&B)NABARD& LWE, has requested the Government for approval of the recommendations of the Technical Evaluation Committee to be incorporated in the bidding document and to submit to NDB for concurrence before submitting to the Hon'ble Judge,Judicial Preview in Form-III and inviting tenders.

3. Government after careful examination hereby approve the recommendations of the Technical Evaluation Committee to incorporate the following in the bidding document and to submit to NDB for concurrence before submitting to the Hon'ble Judge,Judicial Preview in Form III and inviting tenders :

i. the Compliance of Tender Initiating Authority to the Findings and Recommendations dt.10.6.2020 of the Hon'ble Judge, Judicial Preview on the Bid Document indicated in Annexure –A with specific reference to the following provisions :

a) Payment of interest at the rate of 6% per annum on late payment for the period beyond the grace period of 60 days to the date of payment (GCC Clause.43.1)

b) Permission to retain the Price Adjustment Clause as per World bank norms approved by NDB, being an Externally Aided Project duly exempting the use of State Govt. GOs in respect of Price Adjustment.

ii. Permission to incorporate the above compliance indicated in Annexure –A in the modified bid document.

4. The Chief Engineer(R&B)NABARD & LWE., Vijayawada shall take further necessary action in thematter.

5. This order issues with the concurrence of Finance Dept, vide their Uo.No.FIN01-FMUOASD/10/2020-FMU-TR-B, Dt:07/07/2020.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

M.T.KRISHNA BABU
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Chief Engineer (R&B)Admn., &NABARD , A.P,Vijayawada.
Copy to:

The Director of Economic Affairs, Ministry of Finance, Govt of India, New Delhi.
The New Development Bank, Delhi.
The PS to Secy to CM, CMO, AP Secretariat.
The PS to M(Finance), AP Secretariat.
The Ps to Secy to Finance, AP Secretariat.
The OSD to M (R&B) Dept.
The P.S. to Prl.Secy. , TR&B Dept.,
The Director of Treasuries and Accounts, A.P., Vijayawada.
The Pay and Accounts Officer, AP., Vijayawada.
Sf/Sc.

//FORWARDED BY ORDER//

SECTION OFFICER

ANNEXURE-A to G.O.Rt.No. , TR&B(R.I)Dept., Dt:17.07.2020

Compliance of Tender Initiating Authority to the Findings and Recommendations of the Hon'ble Judge, Judicial Preview on the Bid documents for Procurement of NDB works proposed to be taken up with loan assistance of New Development Bank in the state of Andhra Pradesh 10

S.No.	Defects found in RFP clauses	Defect rectification to RFP suggested	Findings & Observations of the JUDGE, Judicial Preview additionally if any to what is recommended supra	Compliance from Tender Initiating Authority
1	In the RFP, at page 3/580, IFB, Clause 3.d a clarification isrequired.	In the RFP, page 3/580, IFB, Clause 3.d to clarify that pre-bid meeting issues are confined ***only to the extent not covered by the Judicial PreviewProcess and where ever any reference to pre-bid meeting, same shall beclarified and also to delete clause 10.2 fully.***	The recommendation is made as essential to avoid possibility of taking un-due advantage by the contractor.	Modified the Cl. 3.d of IFB as recommended.
2	In the RFP, at page 9/580, ITB, Clause 3.1 a clarification is required.	In the RFP, at page 9/580, ITB, Clause 3.1 ***delete the word sub contractorsand insert the word agents if any*** ***Likewise at Clause 5.3.j on subcontract requires deletion entire para.*** ***Where ever refereed about subcontract in the RFPs delete for subcontractis not permitting, except to engage any expert where expert services arerequired.***	The recommendation is made as essential	Modified the ITB Cl. 3.1 as recommended. Deleted the ITB Cl.5.3(j) on subcontract entire para as recommended. *Where ever refereed about subcontract in the RFPs ,the suggestion made is incorporated.*
3	In the RFP, at page 10/580, ITB, Clause 4.1 a clarification is required.	In the RFP, at page 10/580, ITB, Clause 4.1 insert after the words eligible countries as follows: ***i.e. of NDB Member Countries***	The recommendation is made as essential	Modified the ITB Cl. 4.1 as recommended.
4	In the RFP, at page 12/580, ITB, Clause 5.2(I) a clarification is required.	In the RFP, at page 12/580, ITB, Clause 5.2(i) add before the words Power of Attorney as follows: ***Duly Stamped and Registered / notarised***	The recommendation is made as essential	Modified the ITB Cl. 5.2(i) as recommended

5	In the RFP, at page 12/580, ITB, Clause 5.2(II) a clarification is required.	In the RFP, at page 12/580, ITB, Clause 5.2(II) add before the words Power of Attorney as follows: ***Shall not be older more than 3 months***	The recommendation is made as essential	Modified the ITB Cl. 5.2(ii) in BDS as recommended
6	In the RFP, at page 13/580, clause 5.4 a clarification is required.	In the RFP, at page 13/580, clause 5.4, it is required to modify the para as follows that ***"Bids submitted by a Joint venture shall Comply with the following requirements unless otherwise stated in the BDS:*** ***(a). The joint venture must be a registered one under the Indian Partnership Act with the Registrar of Firms and the members including the lead member shall not exceed 3 and their names with address, e-mail etc., shall find place with the Registrar of firms and proof must be submitted along with the bid document ".*** ***a to f are to be renumbered as b to g and delete g*** ***add at Sub-para "d" further after the words signatures of all the partners as follows:Theauthorisation if at all to be given other than to the managing partner for this purpose of this bids, it shall be by a power of attorney by other partners and the power of attorney must be duly stamped and registered or notarised under the Indian Laws and it executed at abroad to be attested and processed through the office of Embassy.*** ***The RFP wherever reference made of Power of Attorney or Authorisation or Joint Venture or Partnership, same has to be taken care of.***	The recommendation is made as essential	Modified the ITB Cl. 5.4 as recommended
7	In the RFP, 13/580, clause 5.5 a clarification is required.	***sub-clauses d & e of clause 5.5 are to be deleted or mentionedas not applicable***	The suggestion is made as essential	Modified the ITB Cl. 5.5(A)(d) & 5.5(e) as recommended
8	In the RFP, 19/580, clause 13.2a clarificationis required.	***clause 13.2 is to be deleted or mentioned as not applicable***	The recommendation is made as essential	Modified the ITB Cl. 13.2 as recommended
9	In the RFP, 19/580, clause 14.2a clarificationis required.	***clause 14.2 is to be deleted or mentioned as not applicable***	The recommendation is made as essential	Modified the ITB Cl. 14.2 as recommended.

10	In the RFP, 19/580, clause 14.3a clarificationis required.	In the RFP, 19/580, clause 14.3 add the following as to GST: ***The prospective bidder/service provider/contractor must be one having GST registration within the State of Andhra Pradesh and without which not eligible to bid, so that the State Government shall not suffer any loss of revenue. The prospective bidder/service provider/contractor is liable to produce proof of its GST registration within the State of Andhra Pradesh as one of the eligibility criteria of technical bid qualifications. If in case not already registered shall undertake by affidavit to cause registered before bid finalization so to consider, however without which not eligible for bid acceptance even declared as lowest bidder and even under reverse tendering process and for such default not only forfeiture of EMD, but also be made liable for other civil and penalconsequences.*** ***The service provider/contractor is liable to pay GST which can bededucted at source on every respective bill payment made by client whichincludes all components as per Section 15(2) of GST Act, 2017. TheContractor shall produce all bills/receipts and accounts regarding cost ofmaterial and GST paid thereon and any input subsidy claimed andavailed to adjust, whenever the client/employer requires. The SOR ratesto be taken in preparing the estimates for arriving value of the contractworks must be on Base price for only material components excluding theGST. Needless to say so far as hire charges of machinery component,labour component since no way attracts for GST payment, so also notliable by department to include GST on contractors profit and overheads.In case the GST levied is on overall amount paid for the works contract tothe contractor, same shall be taken care of in consultation with theCommercial tax department, so that the State shall not suffer anyfinancial loss and the contractor shall not unduly bebenefited.*** ***So far as said GST liability, it is as per the rates of tax applicable if the contract is not exempted from GST concerned. The tax component in so far as works and service contracts for GST as on date is as per G.O.Ms.No.58, Finance(WR.I), Department, dt.08-05-2018 and relevant GOs/ Circulars/ Clarifications being issued from time to time by Government of Andhra Pradesh.*** ***The client shall take care of the above in the contract agreement.***	The recommendation is made as essential	Modified the ITB Cl. 14.3 as recommended .
11	In the RFP, 21/580, clause17.2aclarificationis required.	In the RFP, 21/580, clause 17.2 substitute the following: This bid security shall be in favourof Superintending Engineer, R&BCircle,Visakhapatnamas specified in BDS, in one of the followingforms: ***A bank guarantee issued by a nationalized bank located in India or theState-bank of India branch located abroad in the form given in SectionX;or***	The recommendation is made as essential	Modified the ITB Cl. 17.2 as recommended

		Certified cheque or Bank draft payable at as specified in Appendix.		
12	In the RFP, at page 41/580, clause 19.2 a clarification is required.	***In the RFP, at page 41/580, clause 19.2, to be substituted as mentioned inthe BDS***	The recommendation is made as essential	Modified the ITB Cl. 19.2 as recommended .
13	In the RFP, at page 31/580, ofBidding Data Sheet on ITB1.1 & in **GCC 1.1(p)-** **page.97** aclarification is required.	At page 31 of Bidding Data Sheet on ITB 1.1 insert at the end thefollowing: ***for and on behalf of the Governor of Andhra PradeshSame also to be taken care of in GCC 1.1 (p)-page.97***	The recommendation is made as essential	Modified in BDS on Cl. ITB 1.1 as recommended. Same modification is also carried out in GCC1.1(p) under SCC as recommended
14	***In the RFP, at page 32/580,ITB 5.5 (A)*** (a) Annual Financial turnover: a clarification is required	***In the RFP, at page 32/580, ITB 5.5 (A)*** (a) Annual Financial turnover: not less than **Rs. 142,06,74,015**(INR) at 2020-21 price level, add the following: ***(on Government civil works alone, which include to which country thebidder belongs)*** ***The RFP to be corrected where ever any reference to sub-contractormade by prohibiting any sub-contracting of the project works.***	The recommendation is made as essential	Modified the clause ITB 5.5(A)(a) as recommended . *The RFP is corrected where ever any reference to sub-contractor made by prohibiting any sub-contracting of the project works*
15	In the RFP, at page 17/580, clause 8.1 and a clarification isrequired	In the RFP, at page 17/580, clause 8.1, add the following: ***"The contractor shall use best of the material from the availableapproved quarries as incorporated in the estimate and he can have thepre-visit".*** ***The RFP to be corrected where ever any reference to site visit and approved quarries and use of material made, as follows "TheBidder/contractor should inspect the site and also availableapproved quarries as incorporated in the estimate and shall use best of the material there from,source of water and quote his perentage including quarrying,conveuenace and all othrer charges etc.,."***	The recommendation is made as essential	Modified the clause ITB 8.1 as recommended. The RFP is corrected, where ever any reference to site visit and approved quarries and use of material is made, as recommended.

16	In the RFP, at page 35/580, BDS on ITB 5.5 B(b)8,a clarification is required	In the RFP, at page 35/580, BDS on ITB 5.5 B (b) 8, ***substitute the wordsdiploma in Mechanical Engineering as Civil Engineering.***	The recommendation is made as essential	Modified the clause ITB 5.5B(b)8 in BDS as recommended .
17	In the RFP, at page 37/580, BDS on ITB 13.1(vi), a clarification is required	In the RFP, at page 37/580, BDS on ITB 13.1(vi), is to be substituted as follows: ***Chartered Accountant„s Certificate showing Annual Turnover inGovernment civil engineering construction works in the last fivefinancial years***	The recommendation is made as essential	Modified the clause ITB 13.1(vi) in BDS as recommended.
18	In the RFP, at page 70/580, in General conditions of contract clause 1.1(u) a clarification is required	In the RFP, at page 70/580, in General conditions of contract clause 1.1(u) insert at line number three after the words public safety as follows: ***with COVID-19 conditions to fulfill.***	The recommendation is made as essential	Modified the GCC clause 1.1(u) as recommended.
19	In the RFP, at page 70/580, in General conditions of contract clause 1.1 (s) a clarification is required	In the RFP, at page 70/580, in General conditions of contract clause 1.1(s) "delete from third line onwards the following-**The Intended CompletionDate may be revised only by the Project Manager by issuing anextension of time or an acceleration order.** **Add as follows:** ***The contractor from resuming of possession of the site shown, immediately after the date of agreement which is the date ofcommencement of work, may prescribe the extent of portions of works asper the requirements in the contract as to the order in which he shallexecute so as to complete the contract within the stipulated time as perthe time schedules of the contract. No claim for compensation on accountof the delays to the work from any cause shall be admissible except asabove and defined otherwise in the contract terms. Any extension of timenot entitled but for in exceptional circumstances and as per the writtenorder of the TIA for the Government, with common authority ofGovernment. No separate possession handing over is required but forresuming of possession on showing site by the contractor and thereby thedate of agreement is the date of commencement of work and at any costwithin the thirty daysstipulated".***	The recommendation is made as essential	Modified the GCC clause 1.1(s) as recommended.

20	In the RFP, at page 73/580, in General conditions of contract clause 7.4 a clarification is required	In the RFP, at page 73/580, in General conditions of contract clause 7.4 ***requires to be deleted***		Deleted the clause GCC 7.4 as recommended.
21	In the RFP, at page 79/580, in General conditions of contract clause 21 a clarification is required	In the RFP, at page 79/580, in General conditions of contract clause 21 at 2nd and 3rd lines after the words- Site to the Contractor, add as follows: ***other than that is shown to resume, where possession specifically to beobtained andgiven.***		Modified the clause GCC 21.1 as recommended.
22	In the RFP, at page 80/580, clause 25.4 a clarification is required	In the RFP, at page 80/580, clause 25.4 is required to be replaced as follows: ***The arbitration shall be conducted in accordance with the arbitrationprocedures published by the institution named and in the place specifiedin the SCC. Further, the Arbitrators shall give a decision in writingwithin the stipulated period from initiation of the proceedings and underthe Indian Arbitration and Conciliation Act,1996 amended from time totime. The seat of arbitration must be in Vijayawada of Andhra Pradeshand the language is in English.*** ***The Arbitrators shall entertain only those issues which have beenearlier referred to the Adjudicator and either party is dissatisfied withthe decision given by theAdjudicator.***	The in-house arbitration for settlement of claims providing upto Rs. 10,000/- power to SE is too low so also to CE upto Rs. 50,000/- when the works contracts are in each district is above Rs. 100 Crores value and from the cost of the work components in the present prevailing price from the estimates as per SOR are also increased when compared to past 20 years and thereby the above modification is recommended for these sound and validreasons	Modified the clause GCC 25.4 as recommended.
23	In the RFP, at page 81/580, clause 28.1& 30.1 a clarification is required	In the RFP, at page 81/580, at clauses 28.1 & 30.1 replace the word employer with the following: ***the Chief Engineer as referred supra.*** ***Same is required to be taken care of where ever referred in the RFP***	The recommendation is made as essential to avoid any misuse.	Replaced the word Employer in clauses GCC 28.1 and 30.1 as recommended. *Same modification is carried out where ever referred in the RFP*
24	In the RFP, at page 83/580, clause 34.2 a Clarification is required	In the RFP, at page 83/580, at clauses 34.2 add the following after the words any samples in the fourth line: ***besides made laible for other consequences.***	The Recommendation is made as essential	Modified the clause GCC 34.2 as recommended.

25	In the RFP, at page 83/580, clause 35 a clarification is required	In the RFP, at page 83/580, clause 35 a clarification is required so to add the following as clause 35.5: ***In case if Vigillance&EnforcementDepartmentand AntiCorruptionBeaureuhas taken up any investigation and notices anydefects,thecontractorhastoinvariblyfollowtherecommendations including to re-construct or to carry out the defects and also accepts therecoveries for the defective works***	The Recommendation is made as essential.	A new clause GCC 35.5 is included as recommended ,
26	In the RFP, at page 86/580, clause 43.1 a clarification is required	In the RFP, at page 86/580, clause 43.1 it is required to delete the following portion from line 5 onwards: ***If the Employer makes a late payment, the Contractor shall be paidinterest on the late payment in the next payment. Interest shall becalculated from the date by which the payment should have been madeup to the date when the late payment is made at 6% perannum.***	The recommendation is made as essential.	Modification to the Clause GCC 43.1 recommended was already kept in Special Conditions of the Contract.
27	In the RFP, at page 86/580, clause 43.1 a clarification is required	In the RFP, page 86/580, clause 43.1 required to be modified as follows: ***43.1 Payments shall be adjusted for deductions for advance payments, retention other recoveries in terms of contract & taxes to be deducted at source [TDS] as per applicable law. The Employer shall pay the Contractor the amounts certified by the Project Manager within 60 days of the date of each certificate. If not so paid within said time, interest shall be payable at 6% per annum thereon from the date by which the grace period of 60 days to the date of each certificate is expired up till the date when the payment ismade.***		It was proposed in the bid document as follows: *The Employer shall pay the Contractor the amounts certified by the Project Manager* ***within28days*** *of the date of each certificate and* ***without any interest on late payment.*** However in the Judicial Preview, it is recommendedthat *The Employer shall pay the Contractor the amounts certified by the Project Manager* ***within 60 days*** *of the date of each certificate* ***withinterest on late payment at 6% per annum for the period beyond 60 days to the date of payment.*** ***This issue needs the Specific approval of the Government for incorporating in the bid document as it has financial implications.*** ***On receipt of the approval of the Govt., Clause GCC43.1 will be modified as recommended .***

28	In the RFP, at page 88/580, clause 45 a clarification is required	In the RFP, at page 88/580, clause 45 and 45.1 required to be replaced as follows: ***45. Tax and its Deductions:*** ***45.1 As stated supra on GST*** ***45.2The Employer will perform such duties in regard to the deduction ofsuch taxes at source [TDS] as per applicable under law.***	The recommendation is made as essential	Modified the clause GCC 45 as recommended as follows: **45. Tax and its Deductions:** 45.1*"The rates quoted by the Contractor shall be deemed to be inclusive of the all the duties ,taxes and other levies Except GST,NAC and Seigniorage that the Contractor will have to pay for the performance of this Contract "* *The prospective bidder/ service provider/ contractor must be one having GST registration within the State of Andhra Pradesh and without which not eligible to bid, so that the State Government shall not suffer any loss of revenue. The prospective bidder/service provider/contractor is liable to produce proof of its GST registration within the State of Andhra Pradesh as one of the eligibility criteria of technical bid qualifications. If in case not already registered shall undertake by affidavit to cause registered before bid finalization so to consider, however without which not eligible for bid acceptance even declared as highest bidder and even under reverse tendering process and for such default not only forfeiture of EMD, but also be made liable for other civil and penalconsequences.* *The service provider/contractor is liable to pay GST which can be deducted at source on every respective bill payment made by client which includes all components as per Section 15(2) of GST Act, 2017. The Contractor shall produce all bills/receipts and accounts regarding cost of material and GST paid thereon and any input subsidy claimed and availed to adjust, whenever the client/employer requires. The SOR rates to be taken in preparing the estimates for arriving value of the contract*

				works must be on Base price for only material components excluding the GST. Needless to say so far as hire charges of machinery component, labour component since no way attracts for GST payment, so also not liable by department to include GST on contractors profit and overheads. In case the GST levied is on overall amount paid for the works contract to the contractor, same shall be taken care of in consultation with the Commercial tax department, so that the State shall not suffer any financial loss and the contractor shall not unduly bebenefited. *So far as said GST liability, it is as per the rates of tax applicable if thecontract is not exempted from GST concerned. The tax component in so far as works and service contracts for GST as on date is as per G.O.Ms.No.58, Finance(WR.I), Department, dt.08-05-2018 and relevant GOs/ Circulars/ Clarifications being issued from time to time by Government of Andhra Pradesh* **45.2 The Employer will perform such duties in regard to the deduction of such taxes at source [TDS] as per applicable under law.**
29	In the RFP, at page 77/580, clause 13 a clarification is required	In the RFP, at page 77/580, after clauses 13.5 a clarification is required by incorporation of clauses 13.6 as follows: ***"13.6- In case of any claim by workmen pending in any court of law ortribunal involving the employer also with the contractor, the employer isentitled to retain amount in relation to the claim from final bill of contractor till the claim is cleared".***	The recommendation is made as essential	A new clause GCC 13.6 is included as recommended

M.T.KRISHNA BABU

PRINCIPAL SECRETARY TO GOVERNMENT